

issuance of a loss of wage-earning capacity decision, such as where an employee has a demonstrated need for surgery.

RETURN TO WORK—EMPLOYEE'S
RESPONSIBILITIES

§ 10.515 What actions must the employee take with respect to returning to work?

(a) If an employee can resume regular Federal employment, he or she must do so. No further compensation for wage loss is payable once the employee has recovered from the work-related injury to the extent that he or she can perform the duties of the position held at the time of injury, or earn equivalent wages.

(b) If an employee cannot return to the job held at the time of injury due to partial disability from the effects of the work-related injury, but has recovered enough to perform some type of work, he or she must seek work. In the alternative, the employee must accept suitable work offered to him or her. This work may be with the original employer or through job placement efforts made by or on behalf of OWCP.

(c) If the employer has advised an employee in writing that specific alternate positions exist within the agency, the employee shall provide the description and physical requirements of such alternate positions to the attending physician and ask whether and when he or she will be able to perform such duties.

(d) If the employer has advised an employee that it is willing to accommodate his or her work limitations, the employee shall so advise the attending physician and ask him or her to specify the limitations imposed by the injury. The employee is responsible for advising the employer immediately of these limitations.

(e) From time to time, OWCP may require the employee to report his or her efforts to obtain suitable employment, whether with the Federal Government, State and local Governments, or in the private sector.

§ 10.516 How will an employee know if OWCP considers a job to be suitable?

OWCP shall advise the employee that it has found the offered work to be suitable and afford the employee 30 days to accept the job or present any reasons to counter OWCP's finding of suitability. If the employee presents such reasons, and OWCP determines that the reasons are unacceptable, it will notify the employee of that determination and that he or she has 15 days in which to accept the offered work without penalty. At that point in time, OWCP's notification need not state the reasons for finding that the employee's reasons are not acceptable.

§ 10.517 What are the penalties for refusing to accept a suitable job offer?

(a) 5 U.S.C. 8106(c) provides that a partially disabled employee who refuses to seek suitable work, or refuses to or neglects to work after suitable work is offered to or arranged for him or her, is not entitled to compensation. An employee who refuses or neglects to work after suitable work has been offered or secured for him or her has the burden to show that this refusal or failure to work was reasonable or justified.

(b) After providing the two notices described in § 10.516, OWCP will terminate the employee's entitlement to further compensation under 5 U.S.C. 8105, 8106, and 8107 on all claims where the injury occurred prior to the termination decision, as provided by 5 U.S.C. 8106(c)(2). However, the employee remains entitled to medical benefits as provided by 5 U.S.C. 8103.

§ 10.518 Does OWCP provide services to help employees return to work?

OWCP may, in its discretion, provide vocational rehabilitation services as authorized by 5 U.S.C. 8104. Vocational rehabilitation services may include vocational evaluation, testing, training, and placement services with either the original employer or a new employer, when the injured employee cannot return to the job held at the time of injury. These services also include functional capacity evaluations, which help

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to tailor individual rehabilitation programs to employees' physical reconditioning and behavioral modification needs, and help employees to meet the demands of current or potential jobs.

§ 10.519 What action will OWCP take if an employee refuses to undergo vocational rehabilitation?

Under 5 U.S.C. 8104(a), OWCP may direct a permanently disabled employee to undergo vocational rehabilitation. To ensure that vocational rehabilitation services are available to all who might be entitled to benefit from them, an injured employee who has a loss of wage-earning capacity shall be presumed to be "permanently disabled," for purposes of this section only, unless and until the employee proves that the disability is not permanent. If an employee without good cause fails or refuses to apply for, undergo, participate in, or continue to participate in a vocational rehabilitation effort when so directed, OWCP will act as follows:

(a) Where a suitable job has been identified, OWCP will reduce the employee's future monetary compensation based on the amount which would likely have been his or her wage-earning capacity had he or she undergone vocational rehabilitation. OWCP will determine this amount in accordance with the job identified through the vocational rehabilitation planning process, which includes meetings with the OWCP nurse and the employer. The reduction will remain in effect until such time as the employee acts in good faith to comply with the direction of OWCP.

(b) Where a suitable job has not been identified, because the failure or refusal occurred in the early but necessary stages of a vocational rehabilitation effort (that is, interviews, testing, counseling, functional capacity evaluations, and work evaluations), OWCP cannot determine what would have been the employee's wage-earning capacity.

(c) Under the circumstances identified in paragraph (b) of this section, in the absence of evidence to the contrary, OWCP will assume that the vocational rehabilitation effort would have resulted in a return to work with no loss of wage-earning capacity, and OWCP will reduce the employee's mon-

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etary compensation accordingly (that is, to zero). This reduction will remain in effect until such time as the employee acts in good faith to comply with the direction of OWCP.

§ 10.520 How does OWCP determine compensation after an employee completes a vocational rehabilitation program?

After completion of a vocational rehabilitation program, OWCP may adjust compensation to reflect the injured worker's wage-earning capacity. Actual earnings will be used if they fairly and reasonably reflect the earning capacity. The position determined to be the goal of a training plan is assumed to represent the employee's earning capacity if it is suitable and performed in sufficient numbers so as to be reasonably available, whether or not the employee is placed in such a position.

§ 10.521 If an employee elects to receive retirement benefits instead of FECA benefits, what effect may such an election have on that employee's entitlement to FECA compensation?

Where an employee is undergoing vocational rehabilitation, or where OWCP is attempting to otherwise place that employee in a suitable job, and that employee elects to receive retirement benefits from the Office of Personnel Management instead of benefits under the FECA, the OWCP may proceed with a loss of wage-earning capacity determination which may reduce FECA entitlement as long as the determination is based on the evidence of record at the time of such election.

REPORTS OF EARNINGS FROM EMPLOYMENT AND SELF-EMPLOYMENT

§ 10.525 What information must the employee report?

(a) An employee who is receiving compensation for partial or total disability must advise OWCP immediately of any return to work, either part-time or full-time. An employee must report all outside employment, including any concurrent dissimilar employment held at the time of injury, even if the injury did not result in any lost time in that position. In addition, an employee who